

Elizabeth Osoria

From: Brown, Nancy A <BrownN@SEC.GOV>
Sent: Wednesday, August 7, 2019 8:28 PM
To: DENNIS RICHARD
Cc: MELISSA MACKIEWICZ; Bromberg, Katherine; Daniels, Jon; Tenreiro, Jorge
Subject: RE: SEC v. Honig

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Dennis,
Thank you for your email.

With respect to our document production, you complain about our index but don't specify why it is not suitable to locate producing parties' productions in which you are interested. If it is because you lack the software that enables a search by bates number, we can offer you a re-production of our documents in pdf format. That will allow you to sort the index by producing party, locate corresponding bates numbers and find the documents you are looking for without the need for special software. Let us know if you would prefer the production in that format. While you complain about the size of the production, please keep in mind that it was your client whose amended document request sought the "non-privileged portions of [the Commission's] investigative file in connection with the Inquiry." We have provided what you asked for. And in providing what you asked for, we have categorized the production (although we have no obligation under the Rules to do so); it is all responsive to your Request for Production No. 1. We have no obligation to create some sort of topical guide that bears no relation to your request. Please either provide a date by which you will complete your production or a date by which you will be available for a meet and confer, as I requested yesterday.

From: DENNIS RICHARD <dennis@richardandrichard.com>
Sent: Wednesday, August 7, 2019 3:17 PM
To: Brown, Nancy A <BrownN@SEC.GOV>; DENNIS RICHARD <dennis@richardandrichard.com>
Cc: MELISSA MACKIEWICZ <Melissa@richardandrichard.com>; Bromberg, Katherine <BrombergK@SEC.GOV>; Daniels, Jon <danielsj@SEC.GOV>; Tenreiro, Jorge <tenreiroj@SEC.GOV>; DENNIS RICHARD <dennis@richardandrichard.com>
Subject: RE: SEC v. Honig

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Nancy,

The SEC, on the other hand, has engaged in a classic document dump. The SEC has produced over 4 million pages of documents in unorganized digital form that are not readily searchable. The cost of processing these millions of pages, with an outside vendor, in order to gain any semblance of searchability, is \$46,000, plus a substantial monthly charge thereafter. And even that expense will not result in what is required by the Rules. See *S.E.C. v. Collins*, 256 F.R.D. 403, 411 (S.D. N.Y. 2009), where the SEC contended that it had “the option of producing the complete, unfiltered, and unorganized investigatory file, as this is how the documents are maintained in the usual course of its business.” That option is not available to the SEC, which is not a commercial company maintaining organized files. *Id.* at 412-413. “[C]onducting an investigation – which is by its very nature not routine or repetitive – cannot fall within the scope of the ‘usual course of business.’” *Id.* at 413. As such, the only “remaining option under Rule 34 is to organize and label the production to correspond to the categories in the request. *Id.* at 413. The rationale for this requirement is “to prevent ‘document dumps’” *Excellent Home Care Services, LLC v. FGA*, 2017 WL 9732082, *7 (E.D. N.Y. 2017).

We first called this problem to your attention in early July when you stated that you would get us an index. In early August you sent us an “index” as an excel spreadsheet which contains more than 1.3 million lines in connection with the SEC’s production of more than 4.2 million pages of documents. This too is not helpful. Surely the SEC has some guide to the contents of this production and has organized it by separate topics. The SEC’s failure to provide such information has frustrated Brauser’s ability to become familiar with the support for the SEC’s claims and prepare his defense.

We are not the type to run into court to prematurely pull the trigger on this type of problem. We will if we have to but we hope cooler minds prevail and the SEC provides what is needed and what is required.

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From: Brown, Nancy A <BrownN@SEC.GOV>

Sent: Tuesday, August 6, 2019 2:41 PM

To: DENNIS RICHARD <dennis@richardandrichard.com>

Cc: MELISSA MACKIEWICZ <Melissa@richardandrichard.com>; Bromberg, Katherine <BrombergK@SEC.GOV>; Daniels, Jon <danielsj@SEC.GOV>; Tenreiro, Jorge <tenreiroj@SEC.GOV>

Subject: SEC v. Honig

Dennis,

As you know we've been trying to get an update from Melissa about the status of your client's document production, to no avail. She may be unavailable. Would you please tell us what your availability is for a meet and confer this week prior to Thursday?

Thank you.